

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

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|------------------------------------------|---|-------------------------------|
| Dr. Penny M. Wilkie, |) | |
| |) | |
| Plaintiff, |) | ORDER OF CONSOLIDATION |
| |) | |
| |) | |
| vs. |) | |
| |) | |
| |) | Case No. 4:07-cv-027 |
| The Department of Health |) | |
| and Human Services, |) | |
| |) | |
| Defendant. |) | |
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| |) | |
| Dr. Penny M. Wilkie, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| |) | |
| vs. |) | |
| |) | |
| |) | Case No. 4:08-cv-100 |
| |) | |
| The Department of Health |) | |
| and Human Services, |) | |
| |) | |
| Defendant. |) | |
| |) | |

Before the Court is the Plaintiff's "Motion to Consolidate" filed on December 5, 2008. See Case No. 4:08-cv-100, Docket No. 6. The Plaintiff notes that the above-entitled actions involve the same parties and "the facts out of which the causes of action arise are closely related and in part are even identical." See Case No. 4:08-cv-100, Docket No. 6. The Defendant does not object to a consolidation of the cases. See Case No. 4:08-cv-100, Docket No. 8.

On October 15, 2007, the Defendant filed a motion to dismiss. See Case No. 4:07-cv-027, Docket No. 17. The Court granted the motion as it related to the Plaintiff's Title VII claim because

the Court found that it lacked subject matter jurisdiction due to a failure to exhaust administrative remedies. See Case No. 4:07-cv-027, Docket No. 27. The Court denied the motion as it related to the Plaintiff's tort claims and constitutional claims and held those claims in abeyance pending a final decision from the Merit Systems Protection Board. See Case No. 4:07-cv-027, Docket No. 27. On November 21, 2008, the Plaintiff filed a complaint in a new action (Case No. 4:08-cv-100) which is substantively identical to the original complaint filed in Case No. 4:07-cv-027. See Case No. 4:08-cv-100, Docket No. 1; Case No. 4:07-cv-027, Docket No. 1.

Rule 42 of the Federal Rules of Civil Procedure allows for the consolidation of actions involving common questions of law or fact pending before the Court. Having reviewed the parties' respective pleadings, the Court finds that common questions of law and fact exist so as to warrant consolidation. Further, a consolidation of the above-entitled actions would provide for the best use of judicial resources.

The Court **GRANTS** the Plaintiff's motion to consolidate. Case Numbers 4:07-cv-027 and 4:08-cv-100 shall in all respects be **CONSOLIDATED**. Case No. 4:07-cv-027 shall be designated the lead file and all future filings shall be made in that file.

IT IS SO ORDERED.

Dated this 11th day of December, 2008.

/s/ Daniel L. Hovland
Daniel L. Hovland, Chief Judge
United States District Court